

DECISION**THE COMPTROLLER GENERAL
OF THE UNITED STATES**

WASHINGTON, D.C. 20548

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FILE: B-212548**DATE:** January 24, 1984**MATTER OF:** George A. Raub**DIGEST:**

An employee of the Merit Systems Protection Board submitted a written and timely request for use of 204 hours of annual leave subject to forfeiture at the end of the leave year. The Board denied use of leave due to workload without scheduling it. The Board's failure to schedule the annual leave or request an exigency determination by the designated official constituted administrative error under 5 U.S.C. § 6304(d)(1)(A), and the leave may be restored.

By letter of July 26, 1983, we were asked by the Merit Systems Protection Board to determine whether its former employee, George A. Raub, is entitled to have annual leave forfeited at the end of the 1982 leave year restored under the provisions of 5 U.S.C. § 6304(d). We find that Mr. Raub is entitled to restoration of the forfeited leave.

On November 4, 1982 (more than three pay periods before the end of the 1982 leave year), Mr. Raub, then an employee of the Board's Office of Merit Review and Studies, requested in writing that he be allowed to schedule 204 hours of use or lose leave from November 23 to December 31, 1982. On November 5, 1982, his supervisor denied the request due to the office workload. On January 9, 1983, Mr. Raub requested that the 204 hours of forfeited leave be restored.

The Board states that the leave has not been restored because of its understanding that the statute and implementing regulations require that the leave actually be scheduled in advance. Since Mr. Raub's leave request was denied by his supervisor and the leave was never scheduled, the Board asks whether it may restore the 204 hours of leave forfeited by Mr. Raub.

Subsection 6304(d)(1) of title 5 of the United States Code provides for restoration of annual leave lost by the operation of that section because of:

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"(A) administrative error when the error causes a loss of annual leave otherwise accruable after June 30, 1960;

"(B) exigencies of the public business when the annual leave was scheduled in advance; or

"(C) sickness of the employee when the annual leave was scheduled in advance;"

We have held that for restoration under subsections (B) or (C) of the statute, the express requirement that annual leave be scheduled in advance must be met. Matter of Dana, 56 Comp Gen. 470 (1977).

However, we have construed subsections (B) and (C) as creating a right to restoration of annual leave when it was lost because of a public exigency or sickness and was not lost due to the fault of the employee. Consequently, when an employee submits a "bona fide, formal, and timely request for leave," there can be no discretion whether to schedule the leave or not. The agency must approve and schedule the leave either at the time requested by the employee or if that is not possible because of the agency's workload, at some other time. In the case of an exigency of the public business the matter must be submitted to the designated official for the determination. Thus, we held that it is an administrative error within the meaning of 5 U.S.C. § 6304(d)(1)(A) for an agency to fail to schedule leave or obtain the necessary exigency determination in response to a "bona fide, formal and timely request for leave." Matter of Norsworthy, 57 Comp. Gen. 325 (1978), and Matter of Hanyok, B-187104, September 28, 1978.

Accordingly, since Mr. Raub submitted a "bona fide, formal and timely request for leave" and the Merit Systems Protection Board did not schedule the leave or request an exigency determination, the 204 hours of annual leave forfeited by Mr. Raub at the end of the 1982 leave year may be restored under the provisions of 5 U.S.C. § 6304(d)(1)(A).

Milton J. Arulan
for
Comptroller General
of the United States